REMARKS

The Office Action dated September 9, 2004 has been carefully considered. It is respectfully submitted for the reasons set forth below and in the Declaration of applicant, Richard A. West, submitted herewith that the examiner has misinterpreted the structure and method of operation of the apparatus disclosed in patent 6,126,766 to Hunter, Jr. and therefore, has improperly rejected claims 1-29 under 35 U.S.C. § 102(b). Accordingly, reconsideration, withdrawal of the rejection and allowance of claims 1-29 is in order and is respectfully requested.

Submitted herewith is the Declaration Pursuant to 37 § 1.132 of the applicant Richard A. West attesting to the structural and operational differences between the method and apparatus of his invention and the method and apparatus disclosed in patent 6,126,766 to Hunter, Jr. It is respectfully submitted that Hunter, Jr. does not disclose applicant's apparatus or method and that independent claims 1 and 15 clearly distinguish applicant's invention from the disclosure of Hunter, Jr. In this respect, as set forth hereinafter, and as is set forth in applicant's Declaration, the apparatus and method of Hunter, Jr. does not provide a sloping surface but, rather, a terraced surface as shown by strips A-E in Figure 6 of Hunter, Jr. The terraced surface of Hunter, Jr. does not slope along a path in the direction between the beginning and ending ends of the path as is set forth in applicant's claims 1 and 15.

The examiner incorrectly refers to Figure 6 of Hunter, Jr. as showing the speed of the vehicle decreasing "as it travels from point A to point E as described in column 7, lines 1-10." As is clear from the description in Hunter, Jr. in its entirety, and from the description of the operation of the Hunter, Jr. apparatus in the Declaration of applicant submitted herewith, the Hunter, Jr. apparatus does not travel from point A to point E. To the contrary, the Hunter, Jr. apparatus is moved along each of the paths A-E, perpendicular to the plane of the sheet on which Figure 6 appears, and the

apparatus moves along each path from its beginning to its end at a constant speed which is decreased for each of the paths B, C, D, and E relative to the speed along path A. While the speed of the Hunter, Jr. apparatus is different for each of the paths A-E, the speed is constant along each path from the beginning end to the ending end thereof. Therefore, Hunter, Jr. does not and cannot deposit material such that the material slopes in the direction between the beginning and ending ends of the path of movement of his apparatus, as is required in applicant's claims. Moreover, the speed of the Hunter, Jr. apparatus does not progressively change during movement of the apparatus along the path as is required in applicant's claims 3-6 and 8-14.

Further to the above, and contrary to the examiner's contention, the apparatus of Hunter, Jr. does not perform the method steps of applicant's claims 15-29. In this respect, the method of Hunter, Jr. applies a layer of foamed plastic material on an underlying surface along a path having a beginning end and an ending end in a manner whereby the deposited foamed plastic material has a constant thickness between the beginning and ending ends of the path. The Hunter, Jr. method does not and cannot deposit material along such a path for the deposited material to slope uniformly relative to the underlying surface as is required in applicant's method claims 15-29.

For the foregoing reasons, it is respectfully submitted that claims 1-29 patentably distinguish from Hunter, Jr. and are allowable. Accordingly, reconsideration and allowance are respectfully requested.

Respectfully submitted,
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